

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 CLINTON HARRY STODDARD, No. CIV S-04-1517-FCD-CMK
12 Plaintiff.

vs. FINDINGS AND RECOMMENDATIONS

14 || PEOPLE OF THE STATE OF
CALIFORNIA,

Defendant.

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18 Plaintiff, who is proceeding pro se, filed this action on August 2, 2004. On that
19 same date, the court issued an order requiring plaintiff to serve the defendant in a timely manner
20 pursuant to Federal Rule of Civil Procedure 4(m). More than 120 days have passed since the
21 complaint was filed and it appears that the defendant has not been served. On September 22,
22 2005, the court directed plaintiff to show cause within 20 days why this action should not be
23 dismissed for lack of prosecution and failure to comply with rules and court order. Plaintiff has
24 not responded to the order to show cause.

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1 The court must weigh five factors before imposing the harsh sanction of dismissal.

2 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
3 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
4 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
5 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
6 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
7 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
8 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
9 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
10 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
11 1986). Dismissal has also been held to be an appropriate sanction for failure to follow local rules.
12 See Ghazali, 46 F.3d at 53.

13 Having considered these factors, and in light of plaintiff's failure to serve
14 defendant and to respond to the court's order to show cause, the court find that dismissal is
15 appropriate.

16 Based on the foregoing, the undersigned recommends that this action be dismissed.

17 These findings and recommendations are submitted to the United States District
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
19 after being served with these findings and recommendations, any party may file written objections
20 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
21 and Recommendations." Failure to file objections within the specified time may waive the right
22 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: October 20, 2005.

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26 CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE

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